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NO. 80-102

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1980

RONALD LEE MADSEN,

Petitioner,

-vs-

STATE OF ARIZONA,

Respondent.

ON WRIT OF CERTIORARI
TO THE ARIZONA SUPREME COURT

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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28 U.S.C.
§ 1254(1) 1
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United States Constitution
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Respondent asks this Court to deny petitioner's Petition for Writ of Certiorari for the reasons expressed below.

JURISDICTION

Petitioner is seeking to invoke this Court's jurisdiction under 28 U.S.C. § 1254(1). He is seeking relief from a judgment of a state court of last resort. 28 U.S.C. § 1257.

QUESTION PRESENTED

DID THE SEARCH OF PETITIONER'S RESIDENCE VIOLATE HIS FOURTH AMENDMENT RIGHTS?

STATEMENT OF THE CASE

Robyn Madsen, the victim in this case, had filed for divorce from petitioner, Ron Madsen, and after a brief try at reconciliation they were living apart at the time of the murder. Petitioner

displayed a belligerent attitude toward his soon to be ex-wife. [Reporter's Transcript (R.T.) of March 22, 1978, at 501, 549-51, 561.] He was living with another woman but continued to pay the life insurance premiums on a policy that named him beneficiary in case of Robyn's death. (R.T. of March 23, 1978, at 702.) As the divorce was about to become final petitioner started treating Robyn very nicely. (R.T. of March 22, 1978, at 570, 580.) One day petitioner took a friend, Jay Charnell, and dropped him off along the side of the road. He said he was going to pick up Robyn and when they came past Charnell was to pretend he was hitchhiking and he would pick him up. They rehearsed the story they would tell. (R.T. of March 22, 1978, at 374-75.)

As they rode along after picking Robyn up, petitioner asked Robyn, who enjoyed shooting, if she would like to stop and take a few shots out in the desert. (R.T. of March 22, 1978, at 379.) She declined. Petitioner later suggested that they get together to sight-in their rifles for a javelina hunt. All three agreed to meet another weekend. Petitioner then dropped his wife off and got Charnell to help him move a favorite piano of his to his wife's place because "she wouldn't have it long." (R.T. of March 22, 1978, at 383.)

Charnell and petitioner went target practicing alone a few days later with petitioner using his .30-06 rifle. (R.T. of March 22, 1978, at 384-87.) They met with Robyn as planned on January 23, 1977 for target practicing in the desert. Charnell was throwing cans in the air for

Robyn to shoot when petitioner walked off to the right with his .30-06 mounted with a 4X scope. Robyn asked what he was doing and petitioner replied that he was looking for rabbits. (R.T. of March 22, 1978, at 395.) Charnell threw up a can, heard a shot, looked down and saw Robyn laying on the ground. (R.T. of March 22, 1978 at 398.) She had been struck in the face by a bullet from the left. (R.T. of March 20, 1978, at 74-75.) The bullet came from petitioner's .30-06. Petitioner walked up from the left and said, "there, it's done." (R.T. of March 22, 1978, at 398.) Petitioner rubbed gravel on his arms to make it look like he had tripped and fallen and the gun went off accidently. (R.T. of March 22, 1978, at 400-01). He decided not to clean the human residue off her shotgun because it would look better, then he

covered her with a blanket and drove her to the hospital. (R.T. of March 22, 1978, at 401-03.) He and Charnell practiced the explanations they were going to give on the way. (R.T. of March 22, 1978, at 405.) Charnell ended up changing his story about the "accident" to the police to conform with the way she was actually shot. He wrote a note to this effect and gave it to petitioner warning him that he had not said what he had been instructed to say. (R.T. of March 22, 1978 at 410.)

Sometime in March petitioner offered Charnell $5,000.00 for his past help. (R.T. of March 22, 1978, at 417.) What Charnell really wanted were the notes that petitioner had persuaded him to write and sign. (R.T. of March 22, 1978, at 417-21.) Petitioner was using the note to insure Charnell's silence. (R.T. of March 22, 1978, at 399, 417.) Charnell left the

state. Petitioner remained and collected the insurance money. In spite of the warning note written after the murder the two men's stories were inconsistent. The physical evidence developed did not substantiate petitioner's story of what happened and how it happened. Charnell was arrested in Alabama and agreed to testify for the state.

The record contains additional notes written by petitioner while he was incarcerated on these charges. The notes, written to a fellow inmate at the jail, offer money for the murder of Jay Charnell and another witness in the case. Further references to the record will be made in the argument.

ARGUMENT

THE SEARCH OF PETITIONER'S RESIDENCE DID NOT VIOLATE HIS FOURTH AMENDMENT RIGHTS BECAUSE THE SEARCH WARRANT DESCRIBED WITH SUFFICIENT PARTICULARITY THE PLACE TO BE SEARCHED.

Petitioner complains that the search warrant did not describe the place to be searched with sufficient particularity. He claims that the address on the warrant, "706 E. Hancock, Riviera, Arizona" was incorrect and that police actually searched "698 E. Hancock." The following information was adduced at the suppression hearing on January 4, 1978. Petitioner's father owned adjoining lots on Hancock Road in Riviera, Arizona. (R.T. at 17.) Petitioner lived with his father in a trailer from March to June of 1974 when he moved into an adjacent, unfinished trailer on his father's property. (R.T. at 16, 27.) This second trailer was owned jointly

by the elder Madsens and their son. (R.T. at 28.) There was no fence or anything separating the two trailers on the property. (R.T. at 20.) Both lots were collectively referred to as 706 East Hancock by the elder Madsen and his son. (R.T. of 26-27, 33-34.) The contiguous lots were enclosed by a four-foot chain-link fence with one entrance. (R.T. at 18-19, 34, 37.) There was no street address anywhere on the property. (R.T. at 32-33). The elder Madsen had a clearly visible sign on his trailer reading "The Madsens--Fred and Lillie," which the officers observed. (R.T. at 22-23, 43.)

Petitioner is suggesting that the second trailer where petitioner resided was known as "698 East Hancock." The father referred to the lot on which his son's trailer sat as 698 at the suppression

hearing. Officers, however, had ample reason to believe that petitioner's address was 706 East Hancock. When the victim was taken to the hospital the witness, Charnell, who described himself as a close friend of petitioner, told police that the victim's address and petitioner's address was 706 East Hancock and that is the way they appeared in the police reports. (R.T. at 72-73.) The hospital emergency room admission slip indicated 706 East Hancock. (R.T. at 38, 46.)

Subsequent to the search, petitioner entered into a stipulation with the state filed in Kingman Justice Court on October 20, 1977, declaring that he would remain at his residence, 706 East Hancock, until the time of the preliminary hearing. (Stipulation, Justice Court Cause No. 27,606 dated October 19, 1977.) Petitioner

gave 706 East Hancock as his address to the probation officer who prepared the presentence report in this case. (Presentence Report of April 18, 1978, at 7.) Thus it appears that the established street address of petitioner's residence was 706 East Hancock.

The Arizona Supreme Court pointed out in its opinion, State v. Madsen, ____ Ariz. ____, 609 P.2d 1046, 1048 (1980), that the notes written by the witness Charnell which were subsequently taken in the search of petitioner's residence became known to police through witnesses who had read them and hidden them in the trailer. A witness had described the trailer to police. However, the search warrant gave petitioner's name and referred only to "the premises known as 706 E. Hancock Road, Riviera, Arizona" as the place to be

searched. The court also noted that this was a rural community. Officers had noted the sequence of numbers on buildings along Hancock Road. (R.T. of January 4, 1978, at 42, 45.) There was a market several lots to the east of the 706 property. A house to the west of the property had a visible address in the 500 series. (Id. at 49.) The state had argued that the warrant authorized the search of the entire fenced-in area known as 706, but pointed out that the sign the "Madsens -- Fred and Lillie" focused the officers' attention on the other trailer because the name Ronald Madsen appeared on the warrant.

The Arizona court began its discussion of the search issue by noting that the Fourth Amendment to the United States Constitution requires that the place to be searched must be described in the warrant

with sufficient particularity so that the officer executing the warrant can, with reasonable effort, identify the place to be searched. Steele v. United States, 267 U.S. 498, 45 S.Ct. 414, 69 L.Ed. 757 (1925). They concluded, based on all the facts, that the correct trailer could have been found with reasonable certainty. 609 P.2d at 1049.

The conclusion in State v. Madsen, supra, is correct because the test is one of reasonableness and elaborate specificity is not required on the face of the warrant. In similar circumstances where the physical layout of property suggests a single entity and police have made a reasonable effort to get the proper address before the magistrate, errors have been held not automatically fatal. In United States v. Darensbourg, 520 F.2d 985 (5th Cir., 1975) officers searched an apartment

300 yards from the complex's business office. The warrant showed the street address of the business office which had been obtained from the telephone directory and the search was upheld. In United States v. Melancon, 462 F.2d 82 (5th Cir.) cert. denied, 409 U.S. 1038 (1972) defendant's business and residence were located side-by-side. The warrant authorized a search of Route 2, Box 623. Officers searched Route 2, Box 622. In upholding the search, the court noted, among other things, the address that the defendant had used. In United States ex rel. Hurley v. State, 365 F.Supp. 282 (D.C. Del., 1973), the warrant authorized a search of buildings at a 4021 address. All buildings were enclosed by a fence and the search was upheld even though police unknowingly searched 4023. In United

States v. Rivera, 465 F.Supp. 402 (S.D. N.Y. 1979), the search warrant stated the address to the rear entrance to the building while the main entrance had another address. Noting that the record showed police knew which building was the subject of the search and that the record likewise indicated no confusion existed as to the premises to be searched, the court upheld the conviction.

There is also ample authority in Arizona for upholding a search where, even if the description on the warrant may be technically incorrect, the description is sufficient to locate the place with reasonable effort. State v. Morgan, 120 Ariz. 2, 583 P.2d 889 (1978); State v. Gaitan, 27 Ariz.App. 718, 558 P.2d 746 (1976); State v. Reynolds, 11 Ariz.App. 532, 466 P.2d 405 (1970). None of these

cases require that the legal description of the property appear on the warrant.

Respondent also challenges petitioner's characterization of the notes as a crucial part of the state's evidence. All the witnesses in the case were known to police before any search was conducted; therefore, their testimony is not tainted. Although Charnell did not recall all the contents of these notes he wrote, he never waivered as to their existence and use as leverage to insure his silence. (R.T. of Mar. 22, 1978, at 419, 449, 488.) Two other witnesses had read the notes and knew their whereabouts. Petitioner had shown one of the witnesses the notes while he was inebriated. (R.T. of Mar. 21, 1978, at 295-301.) The items themselves were a very small part of the overwhelming evidence against petitioner.

CONCLUSION

For all of these reasons, petitioner's petition should be denied.

Respectfully submitted this 22nd day of August, 1980.

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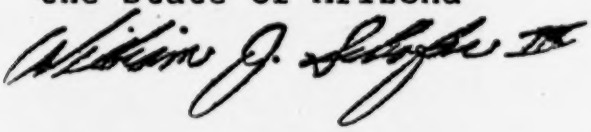

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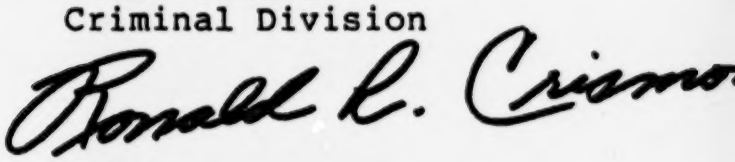

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